



## Chapter 5

# Contract Monitoring

Monitoring means any planned, ongoing, or periodic activity that measures and ensures contractor compliance with the terms, conditions, and requirements of a contract. The level of monitoring should be based on a risk assessment of the contractor's role in delivering client services and the contractor's ability to deliver under the terms of the contract.

### Purpose

The purpose of monitoring is to assist the contractor in:

- ≠# Complying with the terms and conditions of the contract and applicable laws and regulations.
- ≠# Preventing non-compliance by identifying and resolving potential problems by providing constructive, timely feedback.
- ≠# Making progress toward the expected results and outcomes.

While the contractor has responsibility to perform under the terms of the contract, the state agency has responsibility for reasonable and necessary monitoring of the contractor's performance. Effective contract monitoring can assist in identifying and reducing fiscal or program risks as early as possible, thus protecting both public funds and the clients being served.

Monitoring may be viewed as:

- ≠# A preventative function
- ≠# An opportunity to determine the need for enhanced technical assistance, guidance, and training
- ≠# A valuable source of information concerning the effectiveness of services and service delivery methods

### Responsibilities

The individual or team member that has the necessary program expertise, fiscal expertise, authority to assess service, quality and authority to assess compliance with contract provisions should carry out the contract monitoring responsibilities. Executive management should give guidance to staff about monitoring expectations and should clearly communicate who is responsible for monitoring. Contract managers are encouraged to partner with other state agencies in monitoring the activities of a contractor, as appropriate. Typical responsibilities of contract monitoring include:

- ⌘ Comparing the actual performance of the contractor to the contract terms and agreed upon performance indicators.
- ⌘ Identifying all federal and state funds received by the contractor and coordinating with other funding sources, as necessary.
- ⌘ Verifying the contractor has fulfilled requirements of the contract before approving invoices for payment.
- ⌘ Comparing and tracking payments to the contractor against contract terms.
- ⌘ Ensuring timely payment of invoices in accordance with state laws, the contract terms, and agency policies.
- ⌘ Ensuring that the contractor is not reimbursed more than once for client service delivery.
- ⌘ Ensuring that any required audits are performed and received when due.
- ⌘ Evaluating audit findings and the status of corrective action.
- ⌘ Identifying and following any federal or state monitoring requirements.

## Monitoring Plan

One means of defining the specific monitoring methods appropriate to a particular program or service and the monitoring activities to be completed for an individual contractor is a monitoring plan. The plan can identify the tools to measure and assess contract performance and compliance, and the process for collecting information. The plan can also enable an agency to assess the contract management resources necessary to ensure adequate oversight. The level of monitoring should be commensurate with the importance or sensitivity of the service. Further, the plan can identify how monitoring activities might be coordinated between multiple state agencies providing funding to a contractor. Ideally, the monitoring plan will be prepared concurrent with the contract to ensure consistency and that contract requirements support the planned monitoring activities.

Not every contract will require the same level of monitoring. Contractors deemed high risk (refer to [Chapter 1 Contract Management, Risk Assessment Approach section](#)) require more monitoring than those deemed low risk. Where monitoring results demonstrate consistent satisfactory performance, the frequency and extent of monitoring may be adjusted accordingly. This can save the state money, reduce oversight burdens on the contractor, and recognize the contractor's good performance. Refer to [Appendix H](#) for an example of a Risk/Monitoring tool, which links risk factors to the monitoring plan.

Some state agencies may have an agency monitoring plan. This monitoring plan would address agency expectations of assessing risks, the frequency of monitoring visits, and the type of monitoring activities that could be utilized.

## Monitoring Activities

Monitoring activities may include:

- ⌘ **Periodic contractor reporting:** Require the contractor to submit progress reports or other appropriate data or reports, based on pre-defined criteria, and review the contractor's reports for verification of services provided and adherence to the

contract. Substandard performance should be identified and addressed timely and appropriately.

- ⌘ **Agency review of audit reports:** Review any required audit reports and audit work papers and ensure the contractor takes appropriate and timely corrective action.
- ⌘ **Invoice reviews:** Compare billings with the terms agreed upon in the contract. Ensure the costs being charged are within the contract parameters.
- ⌘ **Onsite reviews and observations:** Conduct onsite reviews, interview contractor staff to ascertain their understanding of program goals, interview clients about services received, review key systems and service documentation, review client case records, review personnel records to ensure staff have appropriate credentials, review fiscal records, and observe operations whenever possible. The results of these visits should be documented in writing and compared with contract requirements.
- ⌘ **Other periodic contact with contractor:** Maintain contact with the contractor to review progress on a regular basis. Good contract monitoring includes a continuous dialogue with the contractor.
- ⌘ **Client surveys:** Survey clients concerning contract service delivery and quality. Require the contractor to resolve complaints. Keep records of both the complaint and method of resolution.

Monitoring involves prudent collection of information about contractor operations and is not limited to site visits or the completion of formal reviews. Every communication with a contractor is an opportunity to document monitoring activity. Adequate documentation is essential for effective contract monitoring. Contract files should include copies of letters, meeting notes, and documentation of phone conversations as evidence that conscientious monitoring has occurred during the period of the contract.

Fiscal monitoring includes review of the contractor's invoices and supporting documentation. Before authorizing payment, contract managers should ensure the contractor has adequately demonstrated the satisfactory delivery of services as agreed in the contract. Contract managers should verify the accuracy of the contractor's invoices and documentation, whether billings are consistent with contract requirements, and whether total payments are within the limits set by the contract. Contract managers should ensure that payment documentation required in the [State Administrative and Accounting Manual \(SAAM\), section 85.32.30](#), is on file.

The method of compensation selected may have an impact on the level and type of monitoring activities required to ensure that the state received the services contracted for, and, where specified, the funds are used as intended. Contracts with a cost reimbursement method of compensation, contracts that deliver multiple similar services, or contracts that use multiple funding sources (particularly those supported with federal funds) may require a higher level of monitoring than contracts using other methods of compensation. It will be necessary to monitor the costs that are reimbursed by the state agency. A higher level of monitoring may involve more testing, such as additional review of contractor reports and documentation, site visits, or a combination of these methods.

Appropriate fiscal monitoring procedures should be determined as needed. Decisions regarding the scope and methods may take into account requirements established by the

funding source, risk assessment results, and other relevant factors. For additional information on fiscal monitoring, consult with agency accounting or auditing staff.

Program monitoring deals more specifically with compliance of contract program requirements. If outcomes or goals are identified in contracts, this should be part of the monitoring process. Also, contract managers who monitor contracts, are encouraged to review contracts for clarity. When monitoring, contract managers may become aware of areas where the contract could be written more clearly.

Changes to the original contract may be necessary to clarify contractor expectations. These contract amendments should be in writing.

## **Corrective Action**

Corrective action means action taken by the contractor that corrects identified deficiencies, produces recommended improvements, or demonstrates that deficiencies or findings are either invalid or do not warrant action.

Corrective action is suggested when identified deficiencies are serious (for example, a failure to ensure client health or safety) or where less formal means have failed. Contract problems should be addressed immediately, before they become recurring or serious. Contract managers should check to see if their agency or administrative unit has guidelines or directives for taking corrective action. If so, follow those guidelines or directives.

Serious contract problems that warrant corrective action include:

- ⌘ Failure to ensure client health or safety
- ⌘ Significant audit or monitoring findings
- ⌘ Inferior quality of services
- ⌘ Failure to perform all or part of the contract
- ⌘ Late performance
- ⌘ Late submission of reports on a recurring basis
- ⌘ Inadequate, unclear, or excessive billing

For the staff completing corrective action with contractors, typical responsibilities include:

- ⌘ Communicating contract remedies, as appropriate, when the contractor's performance is deficient.
- ⌘ Seeking specialist advice, including legal counsel, when unsure of the rights of either party or the correct action.

To address minor problems or first occurrences of problems, contract managers should:

- ⌘ Notify the contractor both verbally and in writing that a problem has been identified.
- ⌘ Notify the contractor of expectations for correcting the problem or, if appropriate, ask the contractor to advise how the problem will be corrected.

- ⚡ Specify a date or time when you expect the problem to be resolved or action taken.
- ⚡ Document conversations with the contractor by a memo to the contract file, and/or follow up with a written letter to the contractor.

To address recurring or serious contract problems, contract managers should:

- ⚡ Document conversations with the contractor and set time frames for corrective action.
- ⚡ Check to see if applicable law or regulations direct how corrective action must occur. If so, comply with the legal requirements. For example, the corrective action process applicable to some licensed facilities is set out in the Washington Administrative Code at <http://slc.leg.wa.gov/>.
- ⚡ Clearly identify the problem verbally and in writing. Be specific by using dates, number of occurrences, or other data that quantifies the problem. For example, “Paragraph 4 of your Contract states that you must submit a report by the 5<sup>th</sup> of each month. Your reports for May, June, and July were all submitted over 5 weeks after the due date, and we have not yet received your August report.”
- ⚡ Advise the contractor in writing about the requirements to correct the problem or, if appropriate, ask the contractor to submit a corrective action plan, including dates when corrective action will be completed. Set a deadline for submission of the plan. If this results in any changes to the contract, amend the contract.
- ⚡ Specify a date or time frame for resolution. Unless a shorter or longer time frame is warranted, expect corrective action to be completed within one month.
- ⚡ Track all corrective action to ensure completion.
- ⚡ If a deadline is missed or corrective action is otherwise not completed, follow up in writing immediately. Notify the contractor that a deadline has been missed and ask the contractor when the action will be completed. Advise the contractor that failure to comply with the corrective action plan could lead to termination of the contract. **Note:** *Failure by contract managers to follow up on corrective action could be interpreted later by the court as a waiver.*
- ⚡ If the corrective action is successful in resolving problems, notify the contractor in writing that resolution has been achieved. Remember to document this in the contract file.

## Suspected Criminal Activity

Some activities, such as over billing by a contractor, may be either genuine errors by the contractor or, in extreme cases, may be the result of criminal activity. Generally, the contract manager should consider the contractor’s explanations, while remaining sensitive to the possibility of fraud or related criminal activity. Although rare, the contract manager is often the first person with the opportunity to identify suspicious activity and should follow your agency’s process for investigating when criminal activity is suspected.

State agency staff also should consider whether RCW 43.09.185, Loss of Public Funds – Illegal Activity – Report to state auditor’s office, applies when there is suspected criminal activity by a contractor. This RCW requires reporting known or suspected loss of public funds or assets or other illegal activity to the State Auditor’s Office. For further information, refer to [SAAM 20.30, Suspected Losses of Public Funds or Property](#).

State agency staff who conduct investigations must participate in Investigator Training offered by the Department of Personnel as required by Executive Order 98-02.

## **Termination for Default**

Failure by the contractor to comply with the contract terms may require termination for default. The contract should contain procedures to be followed. Termination should proceed in consultation with the Office of the Attorney General. Refer to [Chapter 3, Contract Provisions](#), for further information about terminating contracts.

## **Post Contract Follow Up**

Once the contract has ended, contract managers are responsible for:

- ## Following up on any activities that the contractor is completing (i.e., final report).
- ## Ensuring all invoices are received and paid, and making final payments to the contractor.
- ## Following up on audit findings.
- ## Assessing whether program objectives and outcomes have been met.

Contract managers should evaluate contractor performance and document, as appropriate, whether contractors have met all terms and conditions of the contract.